

INTERNET
FORM NLRB-502
(2-09)UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

FORM EXEMPT UNDER 44 U.S.C.

DO NOT WRITE IN THIS SPACE

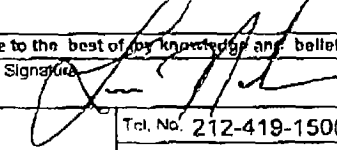
Case No. 29-RC-11938 Date Filed 8/4/10

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

1. PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)
- ☒ RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- ☐ RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- ☐ RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- ☐ UC-UNIT CLARIFICATION - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees (Check one) ☐ In unit not previously certified. ☐ In unit previously certified in Case No. _____
- ☐ AC-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No. _____ Attach statement describing the specific amendment sought.

2. Name of Employer FreshDirect, LLC		Employer Representative to contact Jason Ackerman	Tel. No. 718-928-1000
3. Address(es) of Establishment(s) Involved (Street and number, city, state, ZIP code) 23-30 Borden Avenue, Long Island City, NY 1101		Fax No. 718-433-0648	
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Online grocery store	4b. Identify principal product or service delivery of food and grocery items	Cell No.	e-Mail
5. Unit Involved (In UC petition, describe present bargaining unit and attach description of proposed clarification) Included Maintenance Department workers in the following classifications: plumber, electrician, general mechanic, refrigerator repair, forklift/pallet mechanic, technician, helper and lead worker Excluded All other FreshDirect employees; and Guards and Supervisors, as defined by the Act		6a. Number of Employees in Unit Present 20+ Proposed (By UC/AC)	
(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)		6b. Is this petition supported by 30% or more of the employees in the unit? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No *Not applicable in RM, UC, and AC	

7a. <input checked="" type="checkbox"/> Request for recognition as Bargaining Representative was made on (Date) August 3rd, 2010 and Employer declined recognition on or about (Date) NO REPLY (If no reply received, so state)		7b. <input type="checkbox"/> Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.	
8. Name of Recognized or Certified Bargaining Agent (If none, so state) Teamsters Local 805		Affiliation IBT	
Address 44-61 11th Street, 3rd Floor Long Island City, NY 11101		Tel. No. 718-609-6404 Cell No. 718-612-6522	Date of Recognition or Certification Fax No. 718-609-6408 e-Mail
9. Expiration Date of Current Contract (If any (Month, Day, Year))		10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year)	
11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes <input type="checkbox"/> No <input type="checkbox"/>		11b. If so, approximately how many employees are participating?	
11c. The Employer has been picketed by or on behalf of (Insert Name) _____, a labor organization at (Insert Address) _____ Since (Month, Day, Year) _____			
12. Organizations or individuals other than Petitioner (and other than those named in Items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in Item 5 above (If none, so state)			
Name	Address	Tel. No.	Fax No.
none		Cell No.	e-Mail
13. Full name of party filing petition (If labor organization, give full name, including local name and number) Teamsters Local 805			
14a. Address (street and number, city, state, and ZIP code) 44-61 11th Street, 3rd Floor Long Island City, NY 11101		14b. Tel. No. EXT 718-609-6404 14c. Cell No. 718-612-6522	14c. Fax No. 718-609-6408 14c. e-Mail
15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization)			
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.			
Name (Print) Lorie Nikolaidis		Signature 	Title (if any) attorney
Address (street and number, city, state, and ZIP code) 350 Seventh Ave., 18th Floor New York, NY 10001		Tel. No. 212-419-1500 Cell No.	Fax No. 212-419-1510 e-Mail lnikolaidis@icnlaw.com

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

FRESHDIRECT, LLC

Employer

and

LOCAL 805, TEAMSTERS

Petitioner

Case No.: 29-RC-11938

NOTICE OF REPRESENTATION HEARING

The Petitioner filed a petition under Section 9(c) of the National Labor Relations Act, seeking to represent certain employees employed by the Employer. A copy of the petition is attached. The group of employees described in the petition has indicated their desire to be represented by a union.

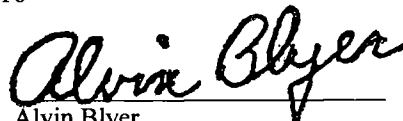
YOU ARE NOTIFIED that on **Friday, August 13, 2010**, at 9:30 a.m., a hearing will be held in this case at Two Metro-Tech Center, 5th Floor, Brooklyn, New York. The parties in this case have the right to appear in person and give testimony if necessary. The hearing will be conducted before a hearing officer of the National Labor Relations Board in order to establish whether:

- (1) A question concerning representation exists;
- (2) This Agency has jurisdiction over this matter (Commerce, Section 2(2), (6) and (7) of the Act);
- (3) The labor union(s) involved are genuine labor organizations under the National Labor Relations Act (Section 2(5) of the Act); and
- (4) An election is sought among employees that are appropriately grouped together (Section 9(b) of the Act).

Please note that the hearing will take place on consecutive days until it is completed. Enclosed is Form NLRB 4669, which explains this Agency's standard procedures in these hearings.

In order to avoid a hearing in this case, the parties may agree to sign an election agreement. It is this Agency's policy to encourage parties to enter into election agreement and an election agreement approved by the Regional Director serves to cancel the hearing.

Signed at Brooklyn, New York on August 4, 2010



Alvin Blyer
Regional Director
NLRB Region 29
Two Metro-Tech Center 5th Floor
Brooklyn, NY 11201-3838

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

FRESH DIRECT, LLC

Employer

and

Case No. 29-RC-11938

LOCAL 805, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Petitioner

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-captioned matter is rescheduled from Friday, August 13, 2010, to Thursday, August 19, 2010, and consecutive days thereafter, at 9:30 a.m., in a fifth floor hearing room at Two MetroTech Center, Brooklyn, New York. No further postponements will be granted absent extenuating circumstances.

PLEASE TAKE FURTHER NOTICE that a formal conference will take place on Thursday, August 18, 2010, at 9:30 a.m. in a 5th Floor Hearing Room, at Two MetroTech Center, Brooklyn, New York.

Dated at Brooklyn, New York, August 11, 2010.

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, Suite 5100
Brooklyn, New York 11201

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

FRESH DIRECT, LLC

Employer

and

Case No. 29-RC-11938

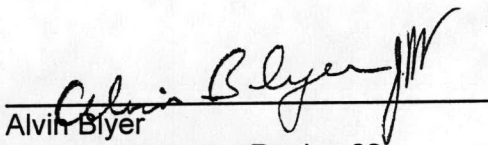
LOCAL 805, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Petitioner

ORDER

IT IS HEREBY ORDERED that the deadline for submission of post-hearing briefs in the above-captioned matter is extended from Friday, August 27, 2010, to Wednesday, September 8, 2010. No further postponements will be granted absent extenuating circumstances.

Dated at Brooklyn, New York, August 26, 2010.


Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, Suite 5100
Brooklyn, New York 11201

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

FRESH DIRECT, LLC

Employer

and

Case No. 29-RC-11938

LOCAL 805, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Nancy Lipin, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.
2. The parties stipulated that Fresh Direct, LLC, a limited liability company, herein the Employer, with its principle office and place of business located at 23-30 Borden Avenue, Long Island City, New York, herein called the Long Island City facility, operates an internet based supermarket selling food and grocery products to customers located in Manhattan, Brooklyn, Queens, Bronx, Westchester, Long Island, New Jersey

and Connecticut. During the past year, which period is representative of its operations generally, the Employer, in the course and conduct of its operations, derived gross revenues in excess of \$500,000, and purchased and received at its Long Island City facility, goods valued in excess of \$5,000 directly from suppliers located outside the State of New York.

Based on the stipulation of the parties and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner, a labor organization within the meaning of Section 2(5) of the Act, claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The Petitioner seeks to represent a unit consisting of all employees in the Employer's Maintenance Department, excluding all other employees, supervisors as defined in Section 2(11) of the Act, and guards. The Employer contends that the petitioned-for unit is inappropriate and that the only appropriate unit must include all production and maintenance employees, excluding plant clericals. For the reasons set forth below, I find that the unit sought by the Petitioner constitutes an appropriate unit and that an election in such unit shall be directed therein.

Background:

The Employer presented the following individuals as witnesses : Gerald Bennett (Bennett), Vice President of Operations Planning; Jim Smith (Smith), Director of

Plant Technology Services; Katherine Rodriguez (Rodriguez), Human Resources Project Manager; and Eric Weidenbach (Weidenbach), Night Shift Dry Goods Manager. The Petitioner called the following individuals to testify: Luis Cruz (Cruz), Ivan Aranda (Aranda), and Walter Garcia (Garcia). All of these individuals are Maintenance Department employees.

The record reflects that the Employer operates a warehouse in Queens, New York, where it stores various foods and households for retail sale to the public. Members of the public place orders via the internet and those orders are filled by employees, referred to as Fresh Direct associates, stationed at various departments throughout the Employer's facility. Approximately 6000 orders are filled on a daily basis. The warehouse has a cold section where meats, produce, fish and other items requiring refrigeration are stored. The temperature in this section is kept at 35 degrees Fahrenheit. There is also a freezer section where items, such as ice cream, are maintained. The freezer is a self contained unit and the temperature inside is 10 degrees below zero Fahrenheit. Other products such as dry goods, cleaning materials, etc. which do not require refrigeration are kept in a separate area.

There are approximately 14 departments that comprise the warehouse operation. The Meat Department which processes customers requests for various types of meat products consists of approximately 50 employees, 1 manager and 3 supervisors. The Deli Department prepares deli products including cheese and meat items and has approximately 35 employees, 1 manager and 3 supervisors. The Seafood Department employs 15 associates, 1 manager and 1 supervisor and is involved in the preparation of seafood items including the butchering of fish. The Kitchen Department also known as

Home Meals Replacement (HMR) makes prepared meals for customers. The Employer employs cooks and dishwashers in this department. Overall HMR has 120 employees, 1 manager and 4 or 5 supervisors. The Produce Department is engaged in the storage and bagging of fruits and vegetables in accordance with customers' orders. The Produce Department has 90 employees, 4 managers and 2 supervisors. The Freezer Department has 15 to 17 employees, 1 manager and 1 supervisor. The Dry Goods Department is a large section employing 190- 200 employees and 7 or 8 supervisors. There are over 4000 different items stored in this department. The employees in this department handle household products of both food and non-food variety that do not require refrigeration. The Dairy Department houses 800 different dairy items in the refrigerated area in the facility and has approximately 40 employees, 1 manager and 1 supervisor. The Receiving Department which is responsible for processing all incoming shipments has a staff of 20 employees overseen by 1 manager and 3 supervisors. The Shipping Department is responsible for the placement of the customers' orders in the appropriate area for delivery and has 45 employees. The Sanitation Department is responsible for maintaining a work place free of garbage and refuse and has 60 employees, 1 manager and 4 supervisors. The Sortation Department plays a pivotal role in the final assembly of customers' orders. Products from the various departments arrive at Sortation via totes or baskets and are placed in eight sorting machines where the items are scanned and sent to the various customers' boxes for final assembly. The sorter is a conveyor that directs items to ten slots, each for a customer's order. There are between 10 and 15 employees at each sorting station and the department runs on two shifts. The total employee complement is 240 employees, 1 manager and 4 or 5 supervisors.

The Maintenance Department has 21 employees , and 1 lead employee, Kislau Medina and 1 manager, Carlos Izquierdo. Jim Smith, the Director of Plant Technology Services, has overall responsibility for the following departments: Maintenance, Engineering and Plant Technology. According to Smith, Maintenance employees are responsible for fixing electrical outlets, handling other electrical problems, cleaning and maintaining HVAC systems (Heating Ventilation and Air Conditioning) and dealing with any other mechanical and plumbing issues that arise. It appears that certain equipment in the plant that malfunction requires outside contractors to address those issues, but that everyday matters that arise are handled in house by Maintenance employees. The job classifications in Maintenance are as follows in descending wage order: Senior Technician, Technician A, Technician B, Technician C, Helper A, Helper B and Helper C. Maintenance employees move up through the classifications based on the development of their skills and expanding experience. Maintenance employees are scheduled for shifts that cover 24 hours a day, seven days a week. There may be anywhere from 3 to 6 Maintenance employees present in the facility at any given time. The continuous presence of Maintenance employees is necessitated by the need to maintain the systems which move and preserve the ordered goods through the facility and eventually to customers.

The record contains no evidence of temporary transfers of Maintenance employees into production departments or production employees into the Maintenance Department. Production employees do apply for permanent transfers into the Maintenance Department and such transfer requests have been granted. It appears that of the current maintenance staff of 21, 9 have transferred in from production classifications.

Ivan Aranda, a maintenance employee testified that when he was first employed by the Employer in 2005, he was assigned to Dry Goods. Shortly thereafter, he spoke with his manager about requesting a transfer to the Maintenance Department. Subsequently, Aranda met with Rafael Requleme, the then Maintenance Department manager, who questioned Aranda about his skills. Aranda told him that he had three years of training in welding for which he received a degree from a technical school in Ecuador, and that he had some background in mechanics. Requleme then offered Aranda a maintenance position which he accepted and he began work the following day. The record does not contain the circumstances of any other transfer of a production employee into the Maintenance Department.

The record evidence establishes that there is a number of different mechanical apparatus that requires continual monitoring in order to maintain the uninterrupted filling of customers' orders. The goal is to have less than one half an hour of down time during a day. More than this could result in the Employer's failing to meet its promise to its customers that deliveries will be made within a two hour period. These systems include the conveyors, a motor driven chain and basket system utilized in dry goods and box making machines. The conveyors move containers through a department while associates place items therein that have been ordered by customers. The chain drive system is utilized in Dry Goods, known as the Richard Wilcox system, and utilizes baskets, each weighing between 150 and 160 pounds that are pulled by a chain that is suspended from the ceiling. Associates place ordered items in baskets as they travel through the department. There are several box making machines in the facility. The Employer purchases cardboard, and the machines can make 18,000 boxes a day. This is a

necessary component of the Employer's operation as the customers' orders are assembled in boxes and are delivered in the same boxes. Thus, keeping these machines functioning is critical to the Employer's operations. The Maintenance Department is responsible for insuring that these various apparatus are kept operational.

The record reflects that all employees, including those employed in the Maintenance Department, receive the same employment benefits, have access to the two cafeterias in the facility, go through the same initial orientation processing and are provided uniforms by the Employer although they may vary by department. Maintenance Department employees wear pants and shirts which identify their names and department and also are provided jackets. The Employer conducts meetings for all employees while each department conducts separate meetings with their staffs. There are two different pay systems, referred to as matrices; one for the Maintenance Department employees and one for all production employees. The Maintenance Department matrix reveals that there are seven different categories of Maintenance Department employees which are as follows: Helper A, Helper B, Helper C, Technician A, Technician B, Technician C and Senior Technician. The record reflects that there is one additional Maintenance Department employee, Tyshawn Labato, whose job title is Mobile Equipment Mechanic and who is responsible for maintaining and repairing the fork lifts and pallets jacks that are used to move product in the Employer's operation. The hourly pay rates for these classifications are as follows: Helper C , \$10.25 – \$11.75; Helper B, \$11.25 – \$12.75; Helper A, \$12.75 - \$14.25; Technician C, \$14.25 - \$16.25; Technician B, \$15.25 - \$17.75; Technician A, \$16.75- \$19.75; and Senior Technician \$18.75 - \$21.75. Because of the skill level required to maintain the fork lifts and pallet jacks, Labato is paid above the matrix scale

and receives \$24.25 an hour. The wage matrix for production employees provides the following base wage rates as of May 3, 2010: Fresh Direct Associates in all departments, \$11.75; HMR assistant, \$11.75; HMR roundsman in training, \$12.50; HMR roundsman, \$14.00; Meat, poultry butcher, \$12.75; Meat, butcher apprentice, \$13.75; Meat, butcher, \$16.25; Meat, master butcher, \$21.75; Seafood or Deli, product specialist, \$12.00; Seafood, fish cutter, \$13.25. The Maintenance Department matrix further reveals that Maintenance Department employees are scheduled to receive increases every six months for the first year and 12 months thereafter according to each employee's tenure. Thus, a maintenance employee who started on January 15, 2009, would receive an increase on July 15, 2009, on January 15, 2010, and another January 15, 2011. Unless Maintenance Department employees started on the same date, they would all have different dates for increases. Production employees are all scheduled to receive increases on the same date. Thus, all employees in the above job classifications received an increase on May 3, 2010 and are scheduled to receive another on December 6, 2010.

Discussion:

It is well established that a certifiable bargaining unit need only be *an* appropriate unit, not the most appropriate unit. Morand Bros. Beverage Co., 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); Omni-Dunfey Hotels, Inc., d/b/a Omni International Hotel of Detroit, 283 NLRB 475 (1987); P.J. Dick Contracting, 290 NLRB 150 (1988); Dezcon, Inc., 295 NLRB 109 (1989). The Board's task, therefore, is to determine whether the petitioned-for unit is an appropriate unit, even though it may not be the *only* appropriate unit. The Board has stated that, in making unit determinations, it looks "first to the unit sought by the petitioner. If it is appropriate, our inquiry ends. If,

however, it is inappropriate, the Board will scrutinize the employer's proposal." Dezcon, Inc., *supra*, 295 NLRB at 111. Thus, the unit requested by a petitioning union is the starting point for any unit determination. Here however, we need not consider the appropriateness of any alternative unit, including the Employer's, as the Petitioner has stated that it will only proceed to an election in the petitioned –for unit. In assessing the appropriateness of any proposed unit, the Board considers such community-of-interest factors as employee skills and functions, degree of functional integration, interchangeability and contact among employees, and whether the employees have common supervision, work sites, and other working terms and conditions. The Board, in *U.S. Plywood-Champion Papers, Inc.*, 174 NLRB 292 (1969), held that application of these factors is warranted in determining the appropriateness of a separate maintenance unit. Upon review of the record with respect to these various elements and, in the absence of bargaining history compelling a contrary conclusion, I find that the petitioned-for unit is appropriate and that a election in such unit is warranted.

The Employer offers various reasons why the Maintenance Department unit is inappropriate and that the only appropriate unit must include all production employees. Specifically, the Employer contends the maintenance and production employees share common supervision, have integrated work duties, possess common skills, enjoy the same employment benefits and that production employees regularly transfer into permanent maintenance jobs. I will discuss each of these arguments below and set forth my reasons why they do not support the Employer's argument.

Contrary to the Employer, the record does not demonstrate that the Maintenance Department employees share common supervision with production

employees. The record does reflect that production supervisors and lead employees will contact Maintenance Department employees directly through Nextel portable telephone to alert them to problems in their departments. It also appears that these supervisors and lead employees may assist Maintenance Department employees in performing repairs. This assistance appears necessary because in certain circumstances more than one person is needed to hold heavy objects while the technical repair is done. Weidenbach, the Dry Goods night shift manager, testified that when baskets on the chain system in Dry Goods get jammed, he will often clear the jam by using a crow bar type tool. He further explained that sometimes he will ask maintenance employees (2 are assigned to Dry Goods on the night shift) to assist him. Weidenbach further testified that if a Maintenance Department employee engaged in serious misconduct in his department, such as a fight (for which the Employer has a zero tolerance policy), he would have security remove that employee. Weidenbach gave no examples of this type of incident ever occurring on his watch. However, he stated that in the event that a Maintenance Department employee was performing his job in a subpar fashion, e.g., too slowly, he would "talk to their manager and ask that ... that they be written up, or they rectify the problem." (Tr.269) When asked if he would communicate with the Maintenance Department manager, Weidenbach stated that he would. When asked by the Hearing Officer if he would take the action himself, Weidenbach replied:" Not in the performance." (Tr.270) When then asked if it was a dry goods employee who was involved, would he take the action himself, he stated that he would. When the Hearing Officer asked the President of Operations Planning Bennett if the Meat Department supervisors and manager supervise other employees, he stated that they supervise

employees in their department and not other employees. According to the testimony of Maintenance Department employee Luis Cruz, when he is performing repair or installation work in a production department, he has little interaction with that department's manager or supervisor. Cruz also stated that no manager or supervisor in production has ever reprimanded him or, to his knowledge, any other Maintenance Department employee. In this regard, the record has no evidence of discipline being issued by a production manager or supervisor to a Maintenance Department employee. Maintenance Department employee Aranda testified that supervisors in production will tell him what they think is the problem with a piece of machinery but they do not direct him how to repair it. If he needs assistance, Aranda will contact a fellow Maintenance Department employee. Maintenance Department staff member Walter Garcia testified that when he has worked in a production area, a production supervisor has never given him instructions on how to repair a machine. He further stated that he has never witnessed a production supervisor substitute for a Maintenance Department supervisor. In view of the foregoing, I find that the record is insufficient to find that production and Maintenance Department employees share day to day supervision. Rather, while the record does establish that production supervisors and managers may suggest the source of a problem in their department, and may assist the employee in the repair they do not direct them in the performance of their work. Further, it also appears that managers in production departments cannot reprimand maintenance employees with respect to their job performance and that that authority is solely vested in Maintenance Department managers and supervisors. While production supervisors may have the authority to take action against a Maintenance Department employee for serious misconduct,¹ the record

¹ The example given was if employees engaged in a fight. The Employer has a zero tolerance policy for

contains no evidence that the exercise of such authority has ever occurred, and, further, it appears that these supervisors have no authority to discipline Maintenance Department employees with respect to work performance. Finally, there is no evidence that production managers and supervisors play any role in the hiring of Maintenance Department employees and that such authority rests with Maintenance Department manager Izquierdo who has exercised that authority. With respect to this factor, the Employer's reliance on the Board's decision in *Buckhorn, Inc.*, 343 NLRB 201 (2004) is misplaced. In that decision, of the 19 maintenance employees, only 5, the skilled employees, were supervised by the maintenance supervisor. The remaining 14 employees were supervised by the shift production supervisor, who also supervised production employees. Production supervisors were the sole immediate supervisors for these 14 maintenance employees as well as 70 production employees. Those supervisors had the authority to hire, discipline and direct the work of the 14 maintenance employees. Further, when the maintenance supervisor was not present at the facility, the 5 skilled maintenance employees received their assignments from the shift production supervisor who had the authority to supercede directions left by the maintenance supervisor. *Buckhorn*, 343 at 203. As the facts in *Buckhorn* are at substantial variance with those in the current record, I find the holding in that case does not support a similar finding here.

The Employer contends that the operation of the Employer's facility demands that Maintenance Department and production employees share integrated work duties and work side by side in meeting the Employer's production goals. Contrary to the Employer, the record establishes that Maintenance Department employees have work

such misconduct and thus it would appear that a supervisor would have no discretion but to take action.

assignments distinct from production employees and that only on a casual, voluntary basis do they engage in production work. Maintenance Department employees are responsible for addressing problems that arise with the various mechanical, electrical and refrigeration systems in the plant. According to Jim Smith, Director of Plant Technology Services, Maintenance Department employees spend most of their time on the plant floor repairing problems that have arisen. Two Maintenance Department employees are assigned to the Dry Goods department per shift because of the frequent problems that occur with the Richard Wilcox chain system. These breakdowns frequently occur up to 10 times a day, and the Employer can ill afford to lose substantial production time restarting the line. The Maintenance Department employees there have to be ready to address and quickly resolve these issues. When Maintenance Department employees in Dry Goods are not engaged in maintenance and repair work, the record does not establish that they are assigned and perform regular production work. Dry Goods night shift manager Weidenbach testified:

Q. And other than fixing problems with this—this chain system, do maintenance employees ever do other work in your department?

A. They do, but it's – I think they do it socially, you know, so they'll help out a packer, you know, and they'll just help them put stuff in boxes, but they're more or less talking.

Q. What does a packer do?

A. A packer, they'll take a--, they get all the items and place them in the boxes, so it's already – all the stuff is already picked, they just got to put it all in the customer boxes. So they're basically standing and pushing buttons. And sometime the maintenance guys will go over there and talk.

Q. Are they asked to help out?

A. No, no.

Q. So, what do you mean they help out socially? Can you elaborate a little bit on what you mean by that?

A. Basically – generally the packers over there are ladies, and they all go over there and talk to them.

Q. Okay, all right. So they're just talking to their friends?

A. Right. (Tr. 267-268)

Weidenbach's testimony does not support the Employer's argument that Maintenance Department employees regularly perform production duties, which would support the mandatory inclusion of production employees and Maintenance Department employees in a single unit. Rather, the testimony demonstrates that Maintenance Department employees perform production work on an infrequent and irregular basis, that it is voluntary and is engaged in primarily as a way of socially interacting with production employees. Smith's testimony is likewise of little support for the Employer's position. When questioned by the Hearing Officer, Smith testified as follows:

Q. So you testified that from time to time Maintenance employees will do production work if that's needed.

A. Um-hum.

Q. How often does that happen?

A. I have no way I can give any kind of an accurate answer to that. The—I mean especially in Dry Goods, a lot of times, you know, our guys will be packing while they're talking.

So I mean because they have to stay there so long, they'll do packing sometimes. If we get in trouble, something that's you know, maintenance related, broke down and caused them to be behind, we all jump in and help. Some guys will be packing, some taping, some carrying totes, whatever. We all get involved to try to catch it up.

Q. Would you say that this happens on a weekly basis, on a monthly basis, that the guys in Dry Goods are going to be helping boxes?

A. I just don't know. I mean it's certainly – I mean I'd definitely be overstating by saying that they do it every day, but you know, there's – it's a- they do it quite often up there.

Q. Every week?

A. Yeah, I just mean I just couldn't tell you for sure. I mean it's a - every week, they're probably doing something and – but-

Q. Every week?

A. – maybe once a month something, you know where we're actually in - where we got in trouble, where we got in trouble, where we're then get out of trouble, I think would be fair statement. (Tr. 208-209)

Smith's testimony, like Weidenbach's, at best, establishes that maintenance employees on a haphazard basis assist with production after a major breakdown has been resolved. As demonstrated by his testimony, Smith was unable to provide, with any reasonable certainty, how often this occurs, how long employees are engaged in this work, and how long such work takes. The testimony of three Maintenance Department employees further establishes that employees of that department do not engage in production work. Cruz, Aranda and Garcia each testified that they are not asked to, nor do they perform, any production work.² They also testified that no production employee has ever been temporarily assigned to the Maintenance Department. While there was some testimony that production employees may assist Maintenance Department employees when line jams occur requiring several employees to hold the baskets while the maintenance workers clear the jam, there was no testimony how much work time this involves and how often it occurs. The same lack of record evidence applies to problems that arise on the box making machines. In light of all of the foregoing, I find that the record does not establish that the work duties and responsibilities of Maintenance Department employees are so integrated with production employees that a unit limited to the Maintenance Department employees cannot stand. To the contrary, the record establishes that these two groups of employees interact on an irregular basis, at best, and that Maintenance Department employees are not assigned production work. Rather, the record reveals that Maintenance Department employees have engaged in such work as a means for social interaction or when an emergency arises, the frequency of which is not established on this record. Further, all the Maintenance Department employees who

² Aranda testified that once in a while a female production worker will ask him to bring down a heavy box as a favor. This appears to occur infrequently as he also testified that he never fills baskets or picks items from the shelves.

testified stated that they never perform production work. Accordingly, I find that this factor supports finding the petitioned-for unit appropriate. See *Ore-Ida Foods, Inc.*, 313 NLRB 1016, 1020 (1994); and *Mobay Chemical Corp.*, 225 NLRB 1159 (1976).

The Employer contends that both Maintenance Department employees and production employees are essentially unskilled and that this factor further compels their linkage in a single unit. The record testimony supplied by the three Maintenance Department employees does not support this assertion. While the Employer does not require Maintenance Department employees to be licensed in any field, or possess certifications of like nature, the employee witnesses all possessed some type of training certificates and had experience in some work related field. Luis Cruz testified that he is a Maintenance Tech A and began working for the Employer in January 2008. Prior to his employment, Cruz attended the Refrigeration Training Center in New York where he received certificates in plumbing, commercial refrigeration, refrigerant recovery and handling of R/410A, a type of refrigerant. His studies there extended over a ten week period. Previously, Cruz attended the School for Accelerated Labor Study in Santo Domingo, Dominican Republic, where he received a certificate in electrical/mechanical training. The director of the New York training center recommended that he contact Maintenance Department manager Izquierdo for possible employment. Cruz met Izquierdo who gave Cruz a test to complete. The test was an electrical plan and Cruz had to find any mistakes in the plan. Izquierdo subsequently offered Cruz employment. Cruz mostly works on the refrigeration units which involves changing electrical parts, keeping evaporators clean and maintaining fans. He also performs other plumbing/electrical work. The tools he uses are a tester (for checking electrical amperage), screwdrivers,

pliers, extractors, a soldering kit, wrenches and a lift. Employee Ivan Aranda, was first employed in 2005 in the Dry Goods Department. Shortly thereafter, Aranda sought and was granted a transfer to the Maintenance Department. After obtaining clearance from the dry goods manager, Aranda interviewed with the then Maintenance Department manager. Aranda disclosed that he had three years of welding training from a technical school in Ecuador, "Life and Progress". The following day Aranda began working in the Maintenance Department. While Aranda is often assigned to work in the dry goods area, he will walk around the plant to see if other maintenance type work needs to be done. The tools Aranda uses include wrenches, hammers , impact drills and a grinder (a tool used to cut metal). Walter Garcia was first employed by the Employer in the Maintenance Department in 2009. Prior to his employment Garcia had received five years of Training in mechanical engineering in a school in Peru and for which he received a bachelor in mechanical engineering. More recently, Garcia took a ten week course in electrical work at the Refrigeration Training Center in New York and upon completion received a certificate. As with Cruz, Garcia was advised to contact Izquierdo about employment with the Employer. Garcia met with Izquierdo who gave him a test requiring him to draw an electrical diagram of a functioning motor. Following the test , Izquierdo showed him the Employer's facility and told him that he needed someone who had the understanding and knowledge of the machines used in the plant. After completing the application process, Garcia was offered employment. The tools used by Garcia include, pliers, screwdrivers, a tester, adjustable wrenches and a band saw. The record also reflects that Tyshawn Labato, the Mobile Equipment Mechanic, the most highly paid Maintenance Department employee, had previous experience in the

maintenance and repair of fork lifts and pallet jacks, and that this background resulted in his employment with the Employer. It appears from the record that other tools used by Maintenance Department employees include crow bar type tools and welding equipment which is permanently stationed in the maintenance workshop. Smith testified that the goal of the Employer is to have everyone in the Maintenance Department qualified as a Tech (which is above the Helper classification), allowing all shifts to be covered by experienced personnel and all machinery maintained. Based upon a review of Employer's Exh. 4, 18 of the 21 Maintenance Department employees are Techs. Thus, the goal has been nearly achieved and the vast majority of the Maintenance Department employees are considered skilled technicians. As the record reflects that production employees, with a few exceptions, e.g. master butcher, are unskilled and not required to use tools in the performance of their jobs, and as maintenance employees possess various skills necessary for the successful performance of their work, I find that this factor supports finding that the Maintenance Department employees have an identifiable community of interest supporting their claim for the petitioned-for unit. In making this finding, I am mindful of the fact that Maintenance Department employees are not required to have licenses or certificates attesting to their claimed skills as a condition of employment. Nonetheless, it appears from the record that the Employer seeks to employ individuals who possess such skills and has tested them prior to extending an offering of employment. Thus, while there is no contention that line production employees are required to be skilled, it appears that the Employer prefers its Maintenance Department employees to have some experience and skill level in the various work responsibilities that fall within the purview of the Maintenance Department.

The record, as noted by the Employer, does reflect that all production and maintenance employees share common employment conditions: insurance, holidays, vacation time, initial orientation and access to the Employer's two cafeterias. While there is some discrepancy with respect to which time clocks these two groups of employees use when punching in, I find this issue of little moment. Likewise, which lockers Maintenance Departments employees use as compared to production employees appears to be a factor worthy of little weight when determining the appropriateness of a bargaining unit. However, comparison of the two payroll matrices reveals that there are substantial differences in both wage rates and how employees receive wage increases. With respect to wage rates, Employer's Exh. 3 reveals that there are seven job classifications in the Maintenance Department, each with a different starting hourly rate: Helper C, \$10.25; Helper B, \$11.25; Helper A, \$12.75; Technician C, \$14.25; Technician B, \$15.25; Technician A, \$16.75; and Senior Technician, \$18.75. (Mobile Equipment Technician, a classification held by Tyshawn Labato, is not on the matrix; he is paid \$24.25 per hour.) Maintenance Department employees can be promoted vertically through the various classifications and receive the increased compensation for that classification. Maintenance Department employees can also progress horizontally in their hourly wage rates on a schedule set forth in the matrix. This progression is keyed to each employee's employment date in the department. For example, a Technician A starts at \$16.75. After 6 months, that rate goes to \$17.25; after 12 months to \$17.75; after 24 months to \$18.25; after 36 months, \$18.75; after 48 months, \$19.25; and after 60 months; \$19.75. The other classifications have similar progressions; all Helper classification increases end after 24 months; Technician C , after 36 months; Technician B , after 48

months; and Senior Technician, after 60 months. I find that there is nothing comparable to this in the production employee matrix regarding individual pay progression. Employer Exh. 2. Rather, all classifications receive a base increase on the same date. For example, all FD Associates in the various production departments are currently paid a base rate of \$11.75 and all will receive an increase in their base rate of \$.25 on December 6, 2010. While the record does not specifically break down the number of production employees into the various production classifications, it appears from the record that the vast majority of the more than seven hundred employees are FD associates earning the base rate of \$11.75. While there are other classifications which have higher hourly wages (these range from \$11.75 to \$21.75 for the master butcher), the number of these employees appear insignificant to affect the average overall base rate of production employees. The average hourly rate of the 21 Maintenance Department employees is \$16.81. Of these employees only one, a recently acquired Helper B, earns less (\$11.25) than the production base hourly rate. Thus, the average hourly rate of Maintenance Department employees is approximately 31% higher than the average production employee. I find this difference substantial. The wage differential and the process by which maintenance employees can receive regular wage increases are yet other factors which distinguish the Maintenance Department employees from production employees and is further support for finding the Petitioner's requested unit appropriate.

The Employer argues that Section 9(c)(5) of the Act "prohibits" the Region from finding that the petitioned-for unit is appropriate. The Employer seems to argue that inasmuch as the Maintenance Department represents the extent of the Petitioner's organizational efforts that such a unit cannot be found appropriate. In support of this

position the Employer cites to the Board' decision in *Overnite Transportation Company*, 322 NLRB 723 (1996). In an earlier decision involving that employer, the Board reversed a regional director's finding that the petitioned-for unit of drivers and dock workers must include three mechanics, and found the petitioned-for unit appropriate. (322 NLRB 347 (1996)). Thereafter, the employer moved for reconsideration arguing, inter alia, that the earlier decision was inconsistent with Section 9(c)(5). In rejecting the employer's Section 9(c)(5) argument, the Board stated:

Moreover, the purpose of Section 9(c)(5) was not to prohibit the Board from choosing between two appropriate units, as the Employer would interpret that section; it was intended to prevent fragmentation of appropriate units into smaller inappropriate units. Here, the requested units are not fragmented or inappropriate groupings of a larger unit; they are units which the Board historically has found appropriate.

Contrary to the Employer, I find that the Board's decision in *Overnite* does not support a finding that the Petitioner's unit is inappropriate. Here, as in *Overnite*, the Petitioner is seeking a unit that the Board has traditionally found appropriate based on an application of the community of interest test. The Petitioner is not seeking to fragment an appropriate unit into a smaller inappropriate unit based on the extent of its organization. Accordingly, I reject the Employer's argument in this regard.

In view of the above, I find the unit petitioned-for constitutes an appropriate unit and that an election therein is warranted. In so finding, I rely primarily on the factors of separate immediate supervision, different work duties and responsibilities, different skill sets, a lack of close and ongoing work integration, and the Maintenance Department's higher wage scale and wage progression. See *Aerospace Corporation*, 331 NLRB 561 (2000); and *Yuengling Brewing Company of Tampa, Inc.*, 333 NLRB 892 (2001). While the maintenance and production employees share certain common employment

conditions, e.g., leave policy, health insurance, personnel policy, holiday, cafeterias, I find that these elements are subordinate to the factors upon which I have relied and do not compel a finding that production and maintenance employees constitute the only appropriate unit. The Board's traditional test requires that a petitioner seek only an appropriate unit, not the most appropriate unit. As the petitioned for unit, set forth below, constitutes an appropriate unit, the continued processing of the petition is warranted.

All full-time and regular part-time maintenance employees employed by The Employer at its facility at 23-30 Borden Avenue, Long Island City, New York, excluding all production employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by Local 805, International Brotherhood of Teamsters. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but

who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Two MetroTech Center, 5th Floor, Brooklyn, New York 11201, on or before **September 23**,

2010. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (718) 330-7579. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **September 30, 2010**. The request may **not** be filed by facsimile.

The parties are advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described Request for Review electronically, please refer to the guidance which can be found under "E-Gov" on the National Labor Relations Board website: www.nlrb.gov.

Dated: September 16, 2010.

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
2 Metro Tech Center, 5th Floor
Brooklyn, New York 11201

AMERICA ★ NATIONAL LABOR BOARD OFFICIAL SECRET BALLOT

EMPLOYEES OF: FRESH DIRECT, LLC

29-RC-11938 (R.D. Dir.)

VOTING UNIT

Included: All full-time and regular part-time maintenance employees employed by the Employer at its facility at 23-30 Borden Avenue, Long Island City, New York, during the payroll period ending September 12, 2010.



Excluded: All production employees, guards and supervisors as defined in the Act.

DATE, HOURS, AND PLACE OF ELECTION

DATE: THURSDAY, OCTOBER 14, 2010

HOURS: 7:00 A.M. – 9:00 A.M.
7:30 P.M. – 8:30 P.M.

PLACE: The Maintenance Shop at the Employer's facility located at 23-30 Borden Avenue, Long Island City, New York.

	<p>UNITED STATES OF AMERICA ESTADOS UNIDOS DE AMERICA NATIONAL LABOR RELATIONS BOARD JUNTA NACIONAL DE RELACIONES DEL TRABAJO FORM NLRB-707N2A (English and Spanish) (10-07)</p> <p>OFFICIAL SECRET BALLOT PAPELETA SECRETA OFICIAL For certain employees of Para ciertos empleados de FRESH DIRECT, LLC</p>	
<p>Do you wish to be represented for purposes of collective bargaining by- ¿Desea usted estar representado para los fines de negociar colectivamente por-</p> <p>LOCAL 805, INTERNATIONAL BROTHERHOOD OF TEAMSTERS?</p>		
<p>MARK AN "X" IN THE SQUARE OF YOUR CHOICE MARQUE CON UNA "X" DENTRO DEL CUADRO DE SU SELECCION</p>		
<p>YES SI</p> <p><input type="checkbox"/></p>		<p>NO NO</p> <p><input type="checkbox"/></p>
<p>DO NOT SIGN THIS BALLOT. Fold and drop in ballot box. If you spoil this ballot return it to the Board Agent for a new one.</p> <p>The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.</p> <p>NO FIRME ESTA PAPELETA. Dóblela y depósitela en la urna electoral. Si usted daña esta papeleta devuélvala al Agente de la Junta y pídale una nueva.</p> <p>La Junta Nacional de Relaciones del Trabajo no respalda a ninguna de las opciones en esta elección. Cualquier marca que usted pueda ver en cualquier muestra de la papeleta no fue hecha por la Junta Nacional de Relaciones del Trabajo.</p>		

AND MUST NOT BE DEFACED BY ANYONE. ANY MARKINGS THAT YOU
RELATIONS BOARD, AND HAVE NOT BEEN PUT THERE BY THE NAT
DOES NOT ENDORSE ANY CHOICE IN THE ELECTION.

ICA ★ JUNTA NACIONAL DE I SO DE ELE

EMPLEADOS DE: FRESH DIRECT, LLC

29-RC-11938 (R.D. Dir.)

UNIDAD DE VOTACION

Incluyen: Todos a tiempo completo y regulares a tiempo parcial, empleados de mantenimiento, empleados por el Empleador en su facilidad en 23-30 Borden Avenue, Long Island City, New York, durante el periodo de pago que termina en Septiembre 12, 2010.



Excluyen: Todos los empleados de produccion, guardias y supervisores asi definido en el Acta.

FECHA, HORAS, Y LUGAR DE LA ELECCION

FECHA: JUEVES, OCTUBRE 14, 2010

HORAS: 7:00 A.M. – 9:00 A.M.
7:30 P.M. – 8:30 P.M.

LUGAR: En el Taller de Mantenimiento en la facilidad del Empleador localizada en 23-30 Borden Avenue, Long Island City, New York.

	<p>UNITED STATES OF AMERICA ESTADOS UNIDOS DE AMERICA</p> <p>NATIONAL LABOR RELATIONS BOARD JUNTA NACIONAL DE RELACIONES DEL TRABAJO FORM NLRB-707N2A (English and Spanish) (10-07)</p> <p>OFFICIAL SECRET BALLOT PAPELETA SECRETA OFICIAL</p> <p>For certain employees of Para ciertos empleados de FRESH DIRECT, LLC</p>	
<p>Do you wish to be represented for purposes of collective bargaining by- ¿Desea usted estar representado para los fines de negociar colectivamente por-</p> <p>LOCAL 805, INTERNATIONAL BROTHERHOOD OF TEAMSTERS?</p>		
<p>MARK AN "X" IN THE SQUARE OF YOUR CHOICE MARQUE CON UNA "X" DENTRO DEL CUADRO DE SU SELECCION</p>		
<p>YES SI</p> <input type="checkbox"/>		<p>NO NO</p> <input type="checkbox"/>
<p>DO NOT SIGN THIS BALLOT. Fold and drop in ballot box. If you spoil this ballot return it to the Board Agent for a new one.</p> <p>The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.</p> <p>NO FIRME ESTA PAPELETA. Dóblela y depósitela en la urna electoral. Si usted daña esta papeleta devuélvala al Agente de la Junta y pídale una nueva.</p> <p>La Junta Nacional de Relaciones del Trabajo no respalda a ninguna de las opciones en esta elección. Cualquier marca que usted pueda ver en cualquier muestra de la papeleta no fue hecha por la Junta Nacional de Relaciones del Trabajo.</p>		

ÓN Y NO DEBE SER MUTILADO POR NINGUNA PERSONA. CUALESQUI
JENAS A LA JUNTA NACIONAL DE RELACIONES DE TRABAJO, Y NO
DEL GOBIERNO DE LOS ESTADOS UNIDOS Y NO ENDOSA A NINGUNA

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

WITHDRAWAL REQUEST

In the matter of Fresh Direct, LLC 29-RC-11938
(Name of case) (Number of case)

This is to request withdrawal of the (petition) (~~charge~~) in the above case.

Withdrawal request approved

Local 805, IBT
(Name of Party Filing)
By Louie Nikolaidis
(Name of Representative)
Attorney
(Title)

(Date)

Regional Director,
National Labor Relations Board.

Date 10/13/10

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

FRESH DIRECT, LLC

Employer
and

Case No. 29-RC-11938

LOCAL 805, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Petitioner

**ORDER APPROVING WITHDRAWAL OF PETITION AND
CANCELING ELECTION**

On August 4, 2010, Local 805, International Brotherhood of Teamsters, herein called the Petitioner, filed a petition in the above-captioned matter seeking to represent certain employees employed by Fresh Direct, LLC, herein called the Employer. On September 16, 2010, the undersigned issued a Decision and Direction of Election which directed that an election be held in the following unit: All full-time and regular part-time maintenance employees employed by the Employer at its facility at 23-30 Borden Avenue, Long Island City, New York, excluding all production employees, guards and supervisors as defined in the Act.

An election was scheduled for Thursday, October 14, 2010, from 7:00 am to 9:00 am, and from 7:30 pm to 8:30 pm.

On October 13, 2010, the Petitioner, in writing, requested permission to withdraw its petition and cancel the election. The Employer does not object to the Petitioner's request to withdraw the petition.

IT IS HEREBY ORDERED that the Petitioner's request to withdraw its petition is approved. Any petition filed by the Petitioner for the unit involved herein within six

months from the date of this Order will not be entertained unless good cause is shown to the contrary.

IT IS FURTHER ORDERED that the election scheduled for Thursday, October 14, 2010, is hereby cancelled.

The Employer is requested to remove the Notices of Election and post a copy of this order in each place where the Notices of Election were posted so that the employees may be informed that the election is canceled.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **October 27, 2010**. The request may **not** be filed by facsimile.

The parties are advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described Request for Review electronically, please refer to the guidance which can be found under "E-Gov" on the National Labor Relations Board website: www.nlr.gov.

Dated at Brooklyn, New York, October 13, 2010.

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center
Brooklyn, New York 11201

INTERNET
FORM NLRB-501
(2-00)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case

Date Filed

29-CA-30333

8/2/2010

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
FreshDirect, LLCb. Tel. No.
718-928-1000

c. Cell No.

f. Fax No.
718-433-0648

d. Address (Street, city, state, and ZIP code)

23-30 Borden Avenue
Long Island City, NY 11101

e. Employer Representative

Jason Ackerman

g. e-Mail

h. Number of workers employed
1,800

i. Type of Establishment (factory, mine, wholesaler, etc.)

online grocery store

j. Identify principal product or service

delivery of food and grocery items

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Managers/Supervisors have committed the following unfair:

- Threatened plant closure on numerous occasions.
- Have threatened termination based on union involvement.
- Interrogated employees regarding their involvement with the union.
- Notified employees that work will be reduced if a warehouse union is formed.
- Surveilled/photographed workers while they talk to union representatives.
- Changed work rules during the organizing drive.

NLRB - REGION 29
 RECEIVED
 AUG 2 2010
 BROOKLYN, NY

3. Full name of party filing charge (If labor organization, give full name, including local name and number)

Teamsters Local 805

4a. Address (Street and number, city, state, and ZIP code)

44-61 11th St., 3rd Floor
Long Island City, NY 111014b. Tel. No.
718-609-64014c. Cell No.
714-612-65224d. Fax No.
718-609-6408

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

International Brotherhood of Teamsters

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By

(signature of representative or person making charge)

(Print/type name and title or office, if any)

Ara Ramirez Organizer

Tel. No.

718-609-6401

Office, if any, Cell No.

714-612-6522

Fax No.

718-609-6408

e-Mail

aramirezmilw@gmail.com

Address 44-61 11th St., 3rd Floor LIC, NY 11101

July 30 2010
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



United States Government
NATIONAL LABOR RELATIONS BOARD
Region 29
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

Telephone (718) 330-7713

August 27, 2010

Fresh Direct LLC
Attn: Jason Ackerman
23-30 Boarden Avenue
Long Island City, NY 11101

Re: **Fresh Direct LLC**
Case No: 29-CA-30333

Dear Sir:

This is to inform you that I have approved the withdrawal of the charges in the above-entitled matter on August 26, 2010.

Very truly yours,

Alvin Blyer
Regional Director

CC: It

Local 805 International Brotherhood of
Teamsters
Attn: Art Ramirez
44-61 11th Street, 3rd Floor
Long Island City, NY 11101

Julian Gonzalez, Esq.
Lewis Clifton & Nikolaidis, PC
350 Seventh Avenue, 18th Floor
New York, NY 10001

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C 3512

DO NOT WRITE IN THIS SPACECase
29-CA-29855Date Filed
10/7/2009**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Fresh Direct, LLC		b. Tel. No. 718-433-0982
		c. Cell No.
		f. Fax No. 718-928-1050
d. Address (Street, city, state, and ZIP code) 23-30 Borden Avenue Long Island City, NY 11101	e. Employer Representative James Moore	g. e-Mail
		h. Number of workers employed
i. Type of Establishment (factory, mine, wholesaler, etc.)	j. Identify principal product or service	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

The Employer refuses to submit to a regular payroll audit in order for Local 348-S to determine if the Employer is in compliance with the collective bargaining agreement by and between the Employer and Local 348-S with respect to contributions to the Local 348 Health and Welfare Fund on behalf of bargaining unit employees.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Local 348-S, UFCW

4a. Address (Street and number, city, state, and ZIP code)9235 Fourth Avenue
Brooklyn, NY 11209

4b. Tel. No. 718-745-3487

4c. Cell No.

4d. Fax No. 718-745-4690

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

United Food and Commercial Workers International Union

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By

(signature of representative of person making charge)

J. Warren Mangan, Attorney

(Print/type name and title or office, if any)

Tel. No. 914-576-7630

Office, if any, Cell No.

Fax No. 914-576-7682

e-Mail
ocmlawyers@aol.com

10/07/09

(date)

Address

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

FRESH DIRECT, LLC, AND UTF
TRUCKING, INC., A Single Employer

and

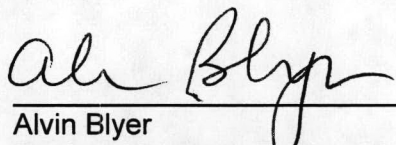
Case No. 29-CA-29855

LOCAL 348S, UNITED FOOD AND
COMMERCIAL WORKERS, CLC

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above captioned matter is rescheduled from June 3, 2010, to June 29, 2010, at 9:30 a.m. and on consecutive days thereafter at a hearing room located at 2 Metrotech Center, 5th Floor, Brooklyn, New York.

Dated at Brooklyn, New York, May 21, 2010.

A handwritten signature in cursive script, appearing to read "Alvin Blyer", written over a horizontal line.

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, NY 11201

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

**FRESH DIRECT, LLC, AND UTF
TRUCKING, INC., A Single Employer**

and

Case No. 29-CA-29855

**LOCAL 348S, UNITED FOOD AND COMMERCIAL
WORKERS, CLC**

ORDER

On October 7, 2009, Local 348S, United Food and Commercial Workers, CLC, herein called the Charging Party, filed the charge in Case No. 29-CA-29855 against Fresh Direct, LLC and UTF Trucking, Inc., herein called Respondent, alleging that Respondent engaged in certain violations of the National Labor Relations Act.

On January 27, 2010, the undersigned issued a Complaint and Notice of Hearing in Case No. 29-CA-29855 against Respondent, alleging violations of the National Labor Relations Act. A hearing initially scheduled for March 23, 2010, was postponed several times, and was finally scheduled for June 29, 2010, by an Order Rescheduling Hearing dated May 21, 2010.

On June 21, 2010, the Charging Party informed the Region that Respondent has provided to its auditors the information at issue in the Complaint. The Charging Party has now requested a conditional withdrawal of the charge, and Respondent has not raised any objection thereto. The Charging Party requests that the approval be conditioned upon Respondent's continued cooperation in providing its auditors with the information at issue in the Complaint.

Accordingly, I hereby approve the Charging Party's request for the conditional withdrawal of the charge, and,

IT IS HEREBY ORDERED, that the Complaint and Notice of Hearing in the above-captioned case is withdrawn, and the hearing scheduled for June 29, 2010, is canceled.

IT IS FURTHER ORDERED, that upon application by the Charging Party, supported by evidence that Respondent has not met the foregoing condition, the charge and the Complaint will be subject to reinstatement for further processing.

Dated at Brooklyn, New York, June 22, 2010.

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center North, Suite 5100
Brooklyn, New York 11201

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
**CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS**

DO NOT WRITE IN THIS SPACE

Case

29-CB-14697

Date Filed

7/11/11

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name Local 348-S UFCW	b. Union Representative to contact Jose Merced, Recording Secretary	
c. Address (Street, city, state, and ZIP code) 9235 4th Avenue, Brooklyn, NY 11209	d. Tel. No. 718-745-3487	e. Cell No.
	f. Fax No.	g. e-Mail

h. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (list subsections) 1(A) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Since (b) (6) termination in (b) (6), 2011, the Union has refused to properly represent (b) (6), (b) (7)(C) for unfair, arbitrary, invidious, and discriminatory reasons regarding (b) discharge.

REGION 29
RECEIVED

2011 JUL 11 A 8:00

BROOKLYN, NY

3. Name of Employer Fresh Direct	4a. Tel. No. (718) 433-0982	b. Cell No.
	c. Fax No.	d. e-Mail
5. Location of plant involved (street, city, state and ZIP code) 2330 Borden Avenue, Long Island City, NY 11101	6. Employer representative to contact Human Resources	
7. Type of establishment (factory, mine, wholesaler, etc.) warehouse	8. Identify principal product or service grocery retail	9. Number of workers employed 500+
10. Full name of party filing charge (b) (6), (b) (7)(C)	11a. Tel. No. (b) (6), (b) (7)	b. Cell No.
	c. Fax No.	d. e-Mail
11. Address of party filing charge (street, city, state and ZIP code.) (b) (6), (b) (7)(C)		

12. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) an individual
(signature of representative or person making charge) (Print/type name and title or office, if any)

(see above)

Address

(date) 7/12/11

Tel. No.

(see above)

Cell No.

Fax No.

e-Mail

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 29
TWO METRO TECH CENTER STE 5100
FL 5
BROOKLYN, NY 11201-3838

Agency Website: www.nlrb.gov
Telephone: (718)330-7713
Fax: (718)330-7579

September 9, 2011

JOSE MERCED, Director
Local 348-S UFCW
9235 4TH AVE
BROOKLYN, NY 11209-7006

Re: Local 348-S UFCW (Fresh Direct)
Case 29-CB-014697

Dear MERCED:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

ALVIN P. BLYER

ALVIN P. BLYER
Regional Director

cc:

(b) (6), (b) (7)(C)

Fresh Direct
2330 BORDEN AVE
LONG ISLAND CITY, NY 11101-4515